UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1053
10 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1053rd MEETING

Held at Headquarters, New York,
on Friday, 5 April 1991, at 10 a.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Panama (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Panama (continued) (CCPR/C/42/Add.7 and Add.11)

1. At the invitation of the Chairman, Mr. Cruz (Panama) took a place at the Committee table.

2. The CHAIRMAN said that the representative of Panama would answer questions held over from section VI of the list of issues.

3. Mr. CRUZ (Panama), referring to section VI (c), said that the new Government had sought from the outset to ensure that judicial officials, members of the Public Prosecutor's Office, the police and all prison personnel were familiar with and applied the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Government hoped, with international assistance, to set up ongoing training seminars on the subject, for the concepts involved had never been enforced under the dictatorship. Currently, all officials and personnel concerned received copies of the legal provisions in question. The relevant regulations and directives were also known and accessible to prisoners. It was not uncommon for detainees, who under the previous regime had been deemed to have no rights, to be interviewed by the media, even in prison. Also, now that prisoners were aware of their rights, they were attempting to stage prison uprisings or demanding better conditions, an indication of the special political climate that now prevailed.

Liberty and security of the person (articles 8 and 9 of the Covenant) (section VII of the list of issues)

4. The CHAIRMAN read out section VII of the list of issues concerning the second periodic report of Panama, namely: (a) with reference to the practice of administratively imposed compulsory labour, whether the planned amendments to the Administrative Code and to Act No. 112 of 1984 had been enacted; (b) whether the Committee's concerns regarding the apparent incompatibility between article 33 of the Constitution and article 9 (1) of the Covenant had been taken into consideration by the Panamanian authorities; (c) information on detention for reasons other than crimes; (d) the maximum period of remand in custody and detention pending trial; (e) how quickly after arrest a person's family was informed and how soon after arrest a person could contact a lawyer; and (f) with reference to paragraph 43 of the report, whether the conditions of payment of damages envisaged in article 129 of the Penal Code were compatible with article 9 (5) of the Covenant, and whether there had been any cases where the State had been required to pay civil damages to such detainees.

5. Mr. CRUZ (Panama), referring to section VII (a), said that Act No. 112 dated from 1974, not 1984. The Administrative Code related only to minor

(Mr. Cruz, Panama)

offences for which the term of imprisonment was one year or less, and such sentences were no longer being applied, with the result that the Administrative Code had effectively fallen into disuse. In any case, the definition of forced or compulsory labour given in article 2 of ILO Convention No. 29 (Forced Labour) excluded work or service performed pursuant to a sentence handed down as part of the judicial process.

6. With reference to section VII (b), he saw no contradiction between article 33 of the Panamanian Constitution and article 9 (1) of the Covenant, and also none between the same article 33 and article 14 of the Covenant, although he recognized that some might perceive an incompatibility there too. Supplementary legislation permitted Supreme Court judges or the Attorney-General to impose penalties on persons who showed disrespect to an official in the act of discharging his official duties, and there might be a conflict in that such penalties were imposed without prior judicial process. However, he could not recollect any case in which those constitutional and legal norms had been enforced, even during the 21 years of military dictatorship.

7. Under article 33 (2), chiefs of public forces could arrest their subordinates without prior trial in order to subdue an insurrection or mutiny or for an infraction of discipline, and under the Defence Forces Act sentences of up to one year's imprisonment had been handed down for insubordination on the part of members of the Defence Forces. However, the Defence Forces Act was being dismantled by the present Government. Under article 33 (3), captains of ships or aircraft could inflict penalties without prior trial in order to repress insurrection or mutiny or to maintain order on board, and to detain temporarily any actual or presumed culprit, when outside of port; it was natural that they should have such powers because it was clearly impossible for a trial to be held on a ship or an aircraft when out of port. The situations envisaged under article 33 of the Constitution were very specific and applied only to exceptional circumstances.

8. Turning to section VII (c) of the list of issues, no one had been detained in Panama during the past 14 months for reasons other than crimes, except for those detained under Act No. 112 for administrative infractions. The Act had been much criticized since its introduction in 1974 because it established a kind of administrative jurisdiction, and he believed that it would shortly be repealed.

9. In answer to section VII (d) of the list of issues, he said that in Panama no distinction was made between remand in custody and detention pending trial. Pre-trial detention applied only to offences carrying prison sentences and could last throughout the investigation and trial process. Detention in other cases would normally last between two and four months, but in view of the large number of cases and the shortage of resources the judicial process did not reach completion within that period. The investigation process alone usually took six or seven months and the trial process, given the possibility

(Mr. Cruz, Panama)

of appeal, could last up to seven years. Delayed justice was a problem for all countries in Central and South America, and in January 1991 the Government of Panama had enacted a law aimed at relieving prison overcrowding and dealing with the long periods of detention by providing alternatives such as house arrest, territorial restriction and the obligation to report regularly to the appropriate authorities.

10. Turning to section VII (e) of the list of issues, he said that from the founding of the Republic in 1903 until 1983, detainees could be held incommunicado until they answered the charges against them. That had not only posed a risk to their physical integrity and even their life, but had also meant that they were obliged to answer the charges made against them without the benefit of legal counsel. When the Panamanian Constitution had been revised in 1983, an article had been inserted - article 22 - stating that all persons placed under arrest must be informed immediately, and in an understandable manner, of the reasons for their arrest, and of their constitutional and corresponding legal rights. Persons accused of committing a crime had the right to be presumed innocent until proven guilty, at a public trial, under due process of law. Whoever was arrested had the right, from that moment, to legal counsel in all police and judicial proceedings. Finally, that matter was to be regulated by law. Unfortunately, it had proved impossible to get the legislative branch of the previous military Government to put the provisions of article 22 into effect. Despite a 1985 ruling by the Supreme Court of Justice declaring unconstitutional all provisions of the Judicial Code of 1917 - still in force at the time - permitting persons to be held incommunicado, the military Government had detained opponents and held them incommunicado, sometimes for several months. That situation no longer prevailed, and a detainee had access to a lawyer and to visits from family members from the moment of his arrest.

11. In dealing with section VII (f) of the list of issues, he said that article 129 of the Panamanian Penal Code required the State to pay civil damages where the defendant succeeded in obtaining the general dismissal of proceedings after having undergone more than one year of pre-trial detention. Article 9 (5) of the Covenant, however, referred to something else: the enforceable right to compensation. It made no distinction as to the length of detention, merely that it had to be unlawful, and did not specify from whom compensation was due. There was not necessarily a contradiction between article 129 of the Penal Code and article 9 (5) of the Covenant; they complemented one another. Article 1645 of the Panamanian Civil Code, however, dealing with the civil liability of the State, provided a very restrictive ruling according to which the State was liable for damages only when a special agent had been involved. That ruling had been subject to considerable interpretation in the Supreme Court of Justice over a number of years, to the effect that the State was not liable for damages except when acting through a special agent, and that a prosecutor, a judge or any other official unlawfully detaining an individual clearly was not a special agent. Thus, although the provisions of the Panamanian Constitution and the Covenant worked in harmony,

(Mr. Cruz, Panama)

it was impossible for someone detained for one year or less to obtain compensation from the State. That would require a revision of the Civil Code permitting the State to be sued and to be legally obliged to pay damages to a person in the circumstances envisaged in the Penal Code and the Covenant.

Right to a fair trial (articles 14 and 15 of the Covenant) (section VIII of the list of issues)

12. The CHAIRMAN read out section VIII of the list of issues concerning the second periodic report of Panama, namely: (a) clarification of the provisions in article 43 of the Panamanian Constitution allowing for laws to have retroactive effect, inter alia, for reasons of "public order or social interest"; (b) the terms of Cabinet Decree No. 17 of 24 January 1990 which reformed and repealed the provisions suspending the requirements for admission to the judicial profession; (c) measures taken to safeguard the independence of the judiciary and the Public Prosecutor's Office, and how extensive were the reforms affecting the criminal investigation department and the Public Prosecutor's Office; (d) developments regarding the bill dealing with the prison system; (e) the effectiveness in practice of constitutional and legal guarantees concerning the independence of magistrates and judges in the exercise of their functions; and (f) information concerning the organization and functioning of the Bar in Panama.

13. Mr. CRUZ (Panama), referring to section VIII (a), said that article 43 of the Panamanian Constitution stated that laws had no retroactive effect, except those of public order or social interest when such was expressed therein. The article also stated that in criminal matters the law favourable to the accused always had preference and retroactivity, even though the judgement might have become final. The 1946 Constitution had stated merely that laws had no retroactive effect, except those of public order or social interest; the phrase "when such is expressed therein" had been inserted in the 1972 Constitution. The legislative branch had been passing laws which were clearly not of public order or social interest but where the phrase "this law relates to public order or social interest" was added, thereby rendering the law retroactive. Previous Governments had abused the phrase on numerous occasions, and he hoped that in any future reform of the Constitution there would be an opportunity to remove the words "when such is expressed therein" from article 43.

14. With regard to section VIII (b) of the list of issues, some background information was required. All Panama's Constitutions had established that judges, magistrates and prosecutors could not be dismissed except under the conditions prescribed by law, and that the judiciary was to be governed by what was known as the carrera judicial, the requirements for admission in the judicial profession. In 1969, the military Government had issued a Cabinet Decree suspending most of the important provisions of the 1963 Act on the requirements for admission to the judicial profession but had not repealed the Act itself. That anomaly had persisted for more than 20 years, until the

(Mr. Cruz, Panama)

adoption in 1987 of the current Judicial Code stipulating that the requirements for admission to the profession were to enter into force as soon as rules governing those requirements were adopted by the Judicial Council. Under the previous regime, however, the Supreme Court had done little or nothing to adopt such rules. Under the new Government, the Supreme Court and the Public Prosecutor's Office had worked intensively on a set of draft Rules on the Requirements for Admission to the Judicial Profession. The draft was now being considered by the Judicial Council, a body composed of three Supreme Court judges, the Attorney-General, the Solicitor-General and the President of the Bar (the latter having been made a member of the Judicial Council under new regulations recently passed by the Government). The Judicial Council was expected to adopt the the draft Rules by the end of the year. Their adoption would be a key factor in the administration of justice in Panama, for they were fundamental to the independence of the judiciary.

15. Under the previous regime, judicial appointments had been made without regard to the requirements for admission to the judicial profession. Cabinet Decree No. 17 of 1990 (para. 9 (d) of CCPR/C/42/Add.11) had repealed or amended the previous Government's provisions suspending those requirements, stipulating essentially that only those persons who met the standards of the forthcoming Rules on the Requirements for Admission to the Judicial Profession could hold judicial office.

16. He hoped that the foregoing also served to answer sections VIII (c) and (e) of the list of issues. The independence of the judiciary and of the Public Prosecutor's Office was fundamental. It was a positive reflection of the independence of the current incumbents that they had come under heavy criticism, widely reported in the Panamanian press, by certain sectors of the present Government, for decisions that had allegedly favoured the opposition. Indeed, opinion polls showed that the Attorney-General was the most unpopular official in the country, and there had been calls for his resignation. Justice, however, was a matter of upholding the Constitution and the laws, and not a matter of popularity with either the Government or the people.

17. As to the recent reforms referred to in section VIII (c), the former criminal investigation department had been reorganized as the judicial police department. Its mandate remained that of conducting preliminary police investigations of offenses, transmitting findings to the Public Prosecutor's Office and working with the Office in the final investigations. The criminal investigation department had been an arm of the Panamanian Defence Forces, so that the Public Prosecutor's Office had in effect been subordinate to the army. That anomaly had now been eliminated. However, the new judicial police department had, in the past 14 months, come to be seen as overly dependent on the executive branch, and the Legislative Assembly was expected to adopt a law making the department accountable only to the Public Prosecutor's Office and the judiciary. In the first few months of the present Government, many undesirable members of the criminal investigation department had been weeded out, and that process was continuing. The Director and Assistant Director of

(Mr. Cruz, Panama)

the new judicial police department were two distinguished Panamanian lawyers, having replaced a member of the Defence Forces and an army-trained official.

18. As for the reforms carried out in the Public Prosecutor's Office, individuals who had been instrumental in promoting repression had been dismissed. The reforms were in their final phase with the dismissal of certain prosecutors on the basis of incriminating information, and the appointment of their replacements.

19. With regard to section VIII (d) of the list of issues, the prison system was, in theory, governed by article 28 of the Constitution, which provided that the prison system must be based on the principles of security, rehabilitation and social protection and that measures harmful to the physical, mental or moral integrity of detainees were prohibited. In practice, however, that was not the case. A bill dealing with the prison system had been drafted and was currently being considered by the legislative branch. Its early adoption was expected, which meant that the Constitution would no longer remain a dead letter in that respect.

20. With reference to section VIII (f) of the list of issues, the Bar in Panama was an association of legal professionals which acted with juridical personality conferred by the Ministry of the Interior and Justice as a non-profit organization governed by the Civil Code. About 3,500 lawyers were registered with the Bar but fewer than that number were actually practising, while many practising lawyers were not registered. The Bar had a chapter in each of the country's nine provinces, among the most active of which were the chapters in Chiriquí, Colón and Atlántico.

21. Under the military dictatorship, the Bar had been totally subservient and had lost all credibility. When the new Government had taken power, the leadership of the Bar had resigned and a new Director had been elected. In July, highly contested elections would be held for the governing body of the Bar. The Bar had recently been a critical factor in the development of new legislation. It had acted independently, at times supporting and at times opposing the Government. It had, for instance, severely criticized the draft Legal Assistance Treaty to be negotiated with the United States. Although the Bar should in theory be apolitical, that was difficult to achieve in practice, and some lawyers actively supported political parties.

22. Mr. SERRANO CALDERA thanked the representative of Panama for filling in many gaps and giving a coherent picture of how the issues raised under articles 8, 9, 14 and 15 of the Covenant applied to Panama.

23. He remained unconvinced, however, that there was no incompatibility between article 33 of Panama's Constitution and article 9 (1) of the Covenant (section VII (b) of the list of issues), because article 33 allowed the application of penalties without prior trial. The same stipulation also violated the due process provisions of article 14 of the Covenant.

(Mr. Serrano Caldera)

24. Regarding section VII (f) of the list of issues, he did not see why article 9 (5) of the Covenant could not be invoked directly in cases not covered by article 129 of the Penal Code or precluded by other legislation. He wondered whether it ever had been invoked and what the outcome had been.

25. The provision in article 43 of the Constitution that laws could be retroactive for reasons of public order or social interest (section VIII (a) of the list of issues) continued to worry him: it violated the universal principle of non-retroactivity of legislation and created various legal uncertainties, and the same legal provision that invoked public order and social interest stipulated retroactivity. At the very least, the legislative branch should consider passing an act that explicitly defined the public order and social interest in question.

26. He would also like to know what happened when the Supreme Court declaréd a law unconstitutional. Was the law automatically repealed or was it simply declared inapplicable in the case at issue?

27. Article 203 of the Constitution appeared to empower the Supreme Court to replace the provisions of a law, repealed by a ruling of unconstitutionality, with new ones. He asked what type of provision could be repealed and replaced in that way, and what was the source of the Court's power to do so. Such a power appeared to turn the Court into a legislative body, and was very unusual in any system of law with which he was familiar.

28. As article 204 of the Constitution stated that a writ of unconstitutionality could not be admitted against judgements of the Supreme Court of Justice or its Chambers, an exclusive exception seemed to be made for Supreme Court judgements. The rulings of judges and courts could normally be appealed against, if not in the Appeals Court, the normal vertical process, then through the less usual constitutional route, and he therefore wished to know whether the judgements of the Supreme Court and its Chambers could in fact be challenged through a writ of unconstitutionality or were immune.

29. Mrs. HIGGINS, commenting on section VII (b) of the list of issues, said that she had noted the 10-day limit within which the initial deprivation of liberty could take place, and the 1-year limit in the case of matters being dealt with under the Defence Forces Act, but wished the representative of Panama to know that there was no provision for an exception relating to defence issues which would make that acceptable in the light of article 9 (1) of the Covenant. Panama was a party to the Optional Protocol, under which a case had already been decided indicating that in the event of detention under military circumstances as envisaged in article 33, the proper guarantees of article 9 of the Covenant were still required for periods far shorter than those practised in Panama. If there was a deprivation of liberty for reasons of military discipline and control, of a duration comparable to that which might occur for ordinary criminal offences, then there was a requirement of

access to an impartial tribunal before such measures could be ordered. With reference to the reply given to section VII (d) that Panamanian law did not distinguish between remand in custody and detention pending trial, she pointed out that article 9 (3) of the Covenant established the twin entitlements to be brought promptly before a judge and to trial within a reasonable time.

30. Article 208 of the Constitution provided that magistrates and judges could not be discharged or suspended except under the conditions prescribed by law. She had no sense of what such conditions were, and whether they were such as to remove any reluctance by judges to act independently.

31. Mr. PRADO VALLEJO said that the answers given made it appear indispensable that Panama's domestic legislation be brought into line with the Covenant. That was the only way in which States could fulfil their obligations under article 2, which imposed upon them the duty to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant. In the case of Panama, it appeared that there was also a need for juridical reform, both in the Constitution and in the laws.

32. The representative of Panama had informed the Committee that the Covenant formed part of Panamanian domestic law. However, according to the Civil Code, Panamanian citizens could not obtain compensation for unlawful arrest or detention, which appeared to indicate a difficulty in putting article 9 (5) of the Covenant into effect.

33. He asked the representative of Panama to tell the Committee how many political prisoners were currently being held. He was raising the question both in the light of the very praiseworthy desire for national reconciliation and because, during a recent visit to Panama, he had been handed a long list of political prisoners or persons subject to political persecution. He would pass the list on to the representative of Panama so that he could comment on the situation with regard to political prisoners in Panama.

34. Similarly, in December 1990 a number of individuals had been arrested for demonstrating against the Government. They had been accused of infringing public order, but in fact theirs was a purely political situation. They had been arrested pursuant to the prevailing decree which banned demonstrations against the Government or those constituting an attack on public order or democracy. Such a broad provision banned even peaceful demonstrations. People arrested for exercising their legitimate right to dissent were political prisoners. Since such a decree ran counter to the Covenant, could it be repealed?

35. He also wished to know of the possibilities for political exiles to return to Panama. Some had already done so, and in a situation of national reconciliation it was obviously desirable that all who had fled for political reasons should be allowed to return to Panama and their families.

(Mr. Prado Vallejo)

36. A related point, although one not specific to Panama alone, was the state of the prisons. There were prisons in Panama which were terribly dilapidated and drastically overcrowded. At the same time, people were being detained without trial for far longer than the possible duration of their sentence. While the problem could be attributed in part to the restructuring of the judicial system, it had to be addressed urgently. As of 30 June 1990, there had apparently been 3,224 detainees in all of Panama's prisons, of whom only 20 per cent had been tried and sentenced.

37. As a result of domestic and social problems in Panama, there had been a wave of crime, with 17,000 new criminal charges, for example, brought in nine months in 1990. More recently, 736 people had been arrested as a result of a public protest, although no legal order had been given for their imprisonment. The large numbers of detainees were overloading the system and preventing a final disposition from being made. Efforts must be made to resolve the situation, and he believed that the Attorney-General was well disposed to make real reforms. He wished to stress that arbitrary or unduly lengthy detention, and detention without trial or in the type of prison conditions prevailing in Panama, infringed the rights enshrined in the Covenant.

38. On the other hand, he wished to express his satisfaction at the reforms the Attorney-General had made in the criminal investigation department. He also welcomed the abolition of two types of irregular judges who had operated outside the normal judicial system and whose activities had given rise to considerable dissatisfaction.

39. Mr. WENNERGREN, recalling that the response to section VII (c) had been that there was no detention for reasons other than crimes, asked about the situation with regard to persons under the influence of drugs or alcohol, or those who were too mentally ill to take care of themselves. Was there no possibility of detention to help them?

40. Secondly, he had a concern about the independence of the judiciary. The Constitution stated that magistrates and judges were independent in the performance of their functions, but it was difficult to find any safeguards in the Constitution for that independence. He had the impression that judges and magistrates had suffered a variety of threats under the Noriega regime, and wished to know whether steps were envisaged to strengthen their independence, and whether it was not felt that such independence should be safeguarded in the Constitution rather than in laws.

41. Mr. ANDO observed, firstly, that article 33 (1) of the Constitution, which stated that officials might arrest anyone who insulted them or was in contempt of their authority, was so loosely worded as to entail a serious risk of abuse. Secondly, with respect to article 43, and while taking into account the clarifications given by the representative of Panama, he had grave concerns about applying a criminal law retroactively.

(Mr. Ando)

42. Turning to paragraph 19 of the addendum to the second periodic report (CCPR/C/42/Add.11), he noted that reducing the number of high court judges required to pronounce final judgements might well have the desired effect of speeding up the judicial process. However, he wondered whether it might also bring other less desirable effects in its wake, and sought further information on the effects which the reduction had had.

43. Mr. MAVROMMATIS said that if article 33 (1) of the Constitution was intended to cover contempt of court, it was far too loosely written. As currently worded, it applied to every public official from a policeman to a messenger. If it was intended to apply specifically to judges, there were other places in the Constitution where the issue could be better handled. He hoped that his comment would help the Panamanians in the process of constitutional reform which they had already started.

44. Similarly, he felt that the provision relating to the powers of chiefs of public forces to arrest their subordinates could be better handled under ordinary criminal law or the military code, with specific safeguards.

45. On the question of detention for reasons other than crimes, his recollection differed from Mr. Wennergren's. He thought the Committee had been told that there was still detention for reasons other than crimes, although the law concerned had been much criticized and there were plans to repeal it. He sought information on the specific matters for which detention could be enforced under that law.

46. He felt that safeguards for the independence of the judiciary should be entrenched in the Constitution, on the basis of traditional ways of ensuring such protection: security of tenure, non-removal except by an independent body, and so on. Lastly, he hoped that in the process of weeding out former members of the Noriega regime from any present positions of authority, due process was being observed in order to avoid any excesses.

47. Mr. CRUZ (Panama), commenting on some of the statements made by members of the Committee, said that it was difficult at the present time to establish the precedence of the Covenant over the Constitution in Panama because there was a division of opinion there, as in many countries, between what might be called the internationalists, who wished to see international instruments given priority, and constitutionalists who believed that national constitutions should take precedence. He did not think that the forthcoming constitutional reform in Panama would help to solve that problem, as it would focus primarily on the elimination of militarism. In any case, before the problem could be solved it was necessary to convince the constitutionalists of the desirability of bringing the Constitution into line with the Covenant. Both the Inter-American Commission on Human Rights and the Human Rights Committee could help in that respect by making greater efforts to disseminate information about the Covenant and the arguments for giving it precedence over domestic legislation.

(Mr. Cruz, Panama)

48. Referring to the comments made on article 33 of the Constitution, he said he did not really wish to defend the article, but wished to emphasize that it was not often applied and that the risk of its abuse seemed remote. For those reasons, he felt that other, more urgent, problems must be given higher priority.

49. Responding to Mr. Ando's question, he noted that it was not the number of judges that had been decreased but the number of those whose signature was required for the judicial actions in question.

50. Turning to other questions, he said that the Supreme Court of Justice had yet to rule on the question of the supremacy of the Covenant. He agreed that that should be done, but felt, as he had said earlier, that an effort must first be made to convince his country's legal experts that the Covenant should in fact take precedence.

51. A question had been asked about the number of political prisoners in Panama. There were no such prisoners in Panama in the sense of persons imprisoned for their political views. People might be imprisoned for crimes such as sedition, which could in a sense be called political crimes but were nevertheless crimes under the Penal Code. There were some prisoners in Panama who claimed that they had been imprisoned for their political views, but that claim had been put forward in an attempt to influence public opinion against the present Government.

52. The figures cited by Mr. Prado Vallejo concerning the number of persons arrested and held without trial were erroneous. Some arrests had been made during the incident referred to by Mr. Prado Vallejo, but none of those arrested had been detained for more than 24 hours.

53. It was true that Act No. 112 of 1974 had yet to be repealed. He was in favour of its repeal and hoped that that would happen. He wished to point out, however, that the Act covered only minor offences for which the most severe penalty was one year's imprisonment; other crimes were covered by the Penal Code.

54. Replying to the question raised by Mr. Serrano Caldera, he said that court judgements were not open to writs of unconstitutionality, which applied only to legal provisions. Court judgements were, however, subject to amparo, which was the specific remedy for infringements of individual freedoms.

55. In connection with article 203 of the Constitution, he explained that rulings of unconstitutionality repealed specific laws but did not restore pre-existing situations. That could, however, be accomplished through other legal procedures under article 203. It was possible for the courts to repeal a specific provision or clause of a law and replace it by another where such action was required, for example, to preserve the intelligibility of a text. That power was, however, rarely used.

(Mr. Cruz, Panama)

56. Clarifying a remark he had made at an earlier meeting, he said that during the decades of dictatorship it had been the almost unvarying practice of the courts either to refuse to receive writs of amparo or to reject them. In the case of writs of habeas corpus brought against actions ordered by the higher courts or persons influential in the regime, those writs had simply been denied. That was why he had expressed satisfaction that some of the detentions he himself had ordered had been declared unlawful; it was an indication that the desire to protect individual rights now existed in the Supreme Court of Justice.

57. Replying to Mr. Wennergren, he said that it was possible to detain persons such as the insane or those under the influence of drugs in order to safeguard their lives or health.

58. Mr. PRADO VALLEJO, speaking in clarification of his earlier question, said he had been informed that a law was to be adopted abolishing the two types of magistrates to which he had referred. He hoped that was in fact the case.

59. His statement about the large number of detentions that had followed the incident in 1990 was confirmed by a report on human rights issued by the State Department of the United States, which indicated that 736 people had been arrested without a warrant on the night of the incident, of whom 463 had been released and 263 were still being held.

60. Mr. CRUZ (Panama) said that the State Department report was incorrect. He wished to add three further comments. A reference had been made to exiles from Panama seeking asylum in other countries. There were no exiles from Panama, as no one had been expelled by the new Government. There were people who had left the country, but they had done so in order to avoid prosecution for crimes and their claim that they were seeking political asylum was spurious. The apparent acceptance of their claims was disturbing because it contributed to the efforts being made to discredit Panama's new Government.

61. In connection with the statement that Panama's prisons were full of people detained without trial, he pointed out that that had been the situation for decades and one common to a number of Central American countries. The Government was concerned about the situation and was trying both to reduce the delays in bringing accused persons to trial and to replace pre-trial detention by other measures. Its efforts, however, were being hampered by a lack of resources.

62. The same was true of prison conditions in general. The Government had taken extraordinary measures to relieve the overcrowding in prisons, but the problems involved had accumulated over 20 or more years and could not be solved quickly. The idea that they could be was dangerous, because it lent

(Mr. Cruz, Panama)

support to those in Panama who wanted to return to a dictatorship. The Government recognized that much remained to be done in that area, as in other human rights areas, and intended to do it, with the help of all its friends around the world.

The meeting rose at 1.05 p.m.